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President and General Counsel

December 14, 2023

The Hon. Jessica G. L. Clarke  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1040  
New York, NY 10007

**Via ECF**

Re: *Reyes v. City of New York*, 23-cv-6369

Dear Judge Clarke,

Counsel for parties in the above-referenced matters submit this letter and the attached proposed Civil Case Management Plan and Scheduling Order, pursuant to the Court's November 21, 2023 Order (Doc. 48) ("Order") and Your Honor's Individual Rules and Practices in Civil Cases.

Counsel met and conferred on November 29. The parties agreed on the attached Scheduling Order, which includes the default dates for most entries. The numbered paragraphs set forth in the Order are addressed sequentially below:

- (1) The parties have agreed to the dates in the scheduling order attached as Exhibit 1 to this letter. They would, however, prefer to keep the December 21 conference to discuss Defendant's demand for a jury trial.
- (2) Plaintiff's Statement:

This case alleges that the policy ("Policy") of the New York Police Department ("NYPD") that prohibits recording in publicly accessible areas of NYPD precincts violate the First Amendment; the New York State Right to Record Act, N.Y. Civ. Rights Law § 79-p; the New York City Right to Record Act, N.Y.C. Admin Code § 14-189; and the Citywide Administrative Procedure Act, N.Y.C. Charter §§ 1041-46.

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Major factual issues that require resolution include (1) information regarding the security concerns of NYPD precinct lobbies, including information regarding what types of complaints are typically filed at the precinct windows and what steps the NYPD takes to provide confidentiality to those who request it, relevant to the First Amendment claim both as to the nature of the forum and whether the Policy is reasonable in light of the relevant facts, (2) information on the development and implementation of the Policy in 2018, (3) information regarding the legislative intent of passing the state and municipal Right to Record Acts.

Defendant's statement:

On April 3, 2023, plaintiff entered the vestibule of the NYPD's 61<sup>st</sup> Precinct and began recording a video. As the Court is aware, the entire incident is captured on video and Plaintiff was ultimately arrested for trespass. The Kings County District Attorney's Office declined to prosecute plaintiff's arrest. As noted above, Plaintiff challenges the NYPD's policy, pursuant to NYPD Administrative Procedure No. 304-21, which prohibits video recording in NYPD precincts. Following the District Court's decision granting Plaintiff's motion for a preliminary injunction, defendant City moved in the Second Circuit for a stay of the preliminary injunction and is also appealing the District Court's decision.

Factual issues that require resolution likely include information regarding the security, safety and other concerns with video recording in NYPD precinct lobbies and whether the NYPD's policy violates the relevant Right to Record Acts and the First Amendment.

- (3) Jurisdiction lies for the First Amendment claim pursuant to 28 U.S.C. § 1331. The parties disagree on whether the Court has supplemental jurisdiction over the state and municipal law claims pursuant to 28 U.S.C. § 1367(a). Venue is proper because Defendant City of New York resides in this district.
- (4) There are no existing deadline or cut-off dates.
- (5) On November 2, 2023, this Court granted plaintiff's motion for a preliminary injunction. (Doc. 28). On November 7, 2023, Defendant filed an emergency motion for an administrative stay and a stay pending appeal in the Second

Circuit Court of Appeals. *See Reyes v. City of New York*, 23-7640 (2d Cir. 2023) Doc. 8. On November 8, 2023, Plaintiff responded. (Doc. 14). That same day, the Second Circuit granted a temporary stay pending review of a panel. (Doc. 16). Defendant filed its reply on November 15 (Doc. 18). The motion for a stay pending appeal remains unresolved. The temporary stay remains in place. Defendant's opening brief in the appeal of the injunction is due on February 16, 2024. (Doc. 29).

- (6) The parties have not engaged in meaningful discovery.
- (7) The parties have discussed settlement and both parties are open to settlement conceptually. Although the parties are open to negotiations, due to the uncertain status of the appellate process, at this juncture, settlement does not seem likely. No formal settlement offers have been exchanged.
- (8) At this time, neither party believes additional information would help advance settlement in this matter.
- (9) The parties disagree on the subject of a jury trial. Defense seeks a jury trial.

Sincerely,

/s/ Andrew Case

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